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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.G., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

D057668

(Super. Ct. No. EJ2988)

APPEAL from orders of the Superior Court of San Diego County, Ronald F.
Frazier, Judge. Affirmed.

A.D. appeals juvenile court orders denying her Welfare and Institutions Code¹
section 388 petition and terminating her parental rights to her daughter, A.G. She
contends the court abused its discretion by denying her petition and erred by not finding

¹ Statutory references are to the Welfare and Institutions Code.

the benefits to A.G. of maintaining their parent-child relationship outweighed the benefits of adoption. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On July 30, 2008, the San Diego County Health and Human Services Agency (the Agency) petitioned under section 300, subdivision (b) on behalf of three-year-old A.G., alleging A.D. was refusing to take her medication and had been placed on a psychiatric hold after drinking alcohol and getting into an altercation in A.G.'s presence. The court ordered A.G. detained and ordered supervised visitation.

A.D. was a client of the San Diego County Regional Center. Her Independent Living Skills social worker (ILS worker) opined A.D. was unable to care for A.G. because of her refusal to take her medication and problems with anger and aggression.

In September 2008, the court found the allegations true, declared A.G. a dependent of the court and ordered A.D. to comply with her case plan.

During the following months, A.D. moved numerous times because of conflicts in each of the homes where she lived. Her therapist reported A.D. was working on anger management and appeared to be improving. She was terminated from one substance abuse program because of conflict with another client, then began a different program and had regular attendance. The psychologist who evaluated her diagnosed bipolar disorder, adjustment disorder and moderate mental retardation, with a mental age of less than an eight and one-half-year-old child. A.D. had conflicts with staff at a visitation center, but other visits were successful. Her parenting class instructor reported she had sporadic attendance.

On November 2, 2009, at the 12-month hearing, the court terminated reunification services and set a section 366 hearing.

The social worker recommended A.G. be adopted. She was friendly, attractive, bright and developmentally on target. She had been in the same foster home for one and one-half years, her foster parents wanted to adopt her and she wanted to stay with her foster family.

At visits A.D. and A.G. interacted and played together, and A.D. praised A.G. and showed affection. During the first months of the dependency, A.G. would cry at the end of visits, but at later visits she said goodbye, separated easily from A.D. and went to stand close to her foster mother.

On April 15, 2010, A.D. filed a section 388 petition, requesting the court set aside the section 366.26 hearing and place A.G. with her or reinstate reunification services. She alleged she had consistently visited A.G., they shared a strong bond, and she was stable on her medication and maintaining a clean and sober life.

The social worker reported that at a meeting in March 2010, A.D. had been agitated, apprehensive and suspicious and after a few minutes got up and left. One of A.D.'s former roommates said A.D. had been drinking and harassing her. After an incident with another former roommate, A.D. sought treatment at a hospital, where she yelled at law enforcement officers and swore at hospital staff. Her ILS worker said A.D. had been refusing to take any medication except anti-depressants.

At a hearing on the section 388 petition, the director of A.D.'s substance abuse treatment program testified A.D. had completed a dual mental health/substance abuse

recovery program and regular substance abuse treatment, she had worked on impulse control and made significant behavioral changes, and she consistently had negative drug and alcohol tests. A.D.'s psychiatrist had been treating her for major depressive disorder for one and one-half years. The psychiatrist said that at their most recent appointment A.D. appeared stable.

A.D.'s therapist testified A.D. appeared to be making better decisions. He said because of her cognitive defects she would need ongoing support. A.D.'s ILS worker testified she worked with A.D. to maintain stable housing and solve problems and went with her to appointments. She concluded although A.D. had benefitted from therapy, she had made only minimal changes in behavior and had not changed in attitude.

The social worker opined A.D. had not made sufficient progress with issues of anger management and mental health. She reported A.D. had never progressed to unsupervised visits.

A.D.'s former roommate testified that in April 2010, A.D. had yelled at him and threatened to break the windows of his car, and their landlord had evicted her. He also had seen her have confrontations with other individuals.

The court denied A.D.'s section 388 petition, finding she had not shown a change of circumstances or that the change she requested would serve A.G.'s best interests.

For the section 366.26 hearing, the social worker testified A.G. is an adoptable child and her foster parents wanted to adopt her. Two social workers reported that during visits A.D. was appropriate and loving, but they concluded, although A.G. wanted to continue to visit A.D., she needed the stability and peace she had found in her foster

home. The ILS worker testified A.G. appeared to look forward to visits with A.D. and said she missed A.D. She said during earlier visits A.D. sometimes had outbursts when A.G. was present at which time A.G. would become quiet and withdrawn. She believed A.D. and A.G. had a parent-child relationship and an emotional attachment.

A.D. testified she visited A.G. and telephoned her every day. She said A.G. was always happy to see her and told her she missed her. She said she had remained sober and she did not want A.G. to be adopted.

The court found A.G. was adoptable and none of the statutory exceptions to termination of parental rights and adoption were present. The court terminated parental rights and referred the matter for adoption.

DISCUSSION

I

A.D. contends the court abused its discretion by denying her section 388 petition. She argues she showed a change of circumstances in that she completed substance abuse treatment, had negative drug and alcohol tests, was taking her medication regularly, had completed anger management treatment, attended therapy, and had consistent visits with A.G. She claims it would be in A.G.'s best interests to place A.G. with her or offer additional reunification services.

After a court has terminated reunification services, "the focus shifts to the needs of the child for permanency and stability." (*In re Hashem H.* (1996) 45 Cal.App.4th 1791, 1800.) However, "[e]ven after the focus has shifted from reunification, the [statutory] scheme provides a means for the court to address a legitimate change of circumstances

while protecting the child's need for prompt resolution of his custody status." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.)

A change of circumstances may be brought to the court's attention through a petition under section 388. Section 388 provides in part:

"(a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court [¶] . . . [¶]

"(d) If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held"

In order to gain the relief sought in a section 388 petition, the petitioner must show both a change of circumstances or new evidence and that the change sought is in the minor's best interests. (§ 388; Cal. Rules of Court, rule 5.570; *In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) The petitioner bears the burden of proof to make both showings. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

"The [section 388] petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion." (*In re Jasmon O.* (1994) 8 Cal. 4th 398, 415.) A reviewing court will not disturb a court's discretionary ruling in a dependency proceeding " ' "unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." ' ' " (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.)

The court did not abuse its discretion by finding A.D. did not show a change of circumstances within the meaning of the statute. Although her behavior had improved during meetings at her treatment center, outside of her program she continued to have problems with anger and impulse control, including having two volatile incidents at the Agency offices in June 2010. She sometimes was hostile toward the social worker and had had altercations with two roommates and with other persons. Her therapist believed she had made progress, but said she needed ongoing support and relapse prevention. Her ILS worker opined she had made only minimal changes in behavior and no changes in her attitude toward others. She did not have a stable place to live until just two months before the hearing because of her inability to get along with roommates. The court did not abuse its discretion by finding A.D. did not show changed circumstances.

The court also did not abuse its discretion by finding the modifications A.D. requested were not in A.G.'s best interests. By the time of the hearing, A.G. had been a dependent of the court for nearly two years. Her foster parents had cared for her during this time and wanted to adopt her and she wanted to stay with them. Despite voluntary services in 2005 and 2006 and services during A.G.'s dependency, A.D. continued to have problems with anger and aggression and with finding stable housing. Although she and A.G. shared an emotional attachment, she did not show it would be in A.G.'s best interests to place A.G. with her or offer additional reunification services. The court did not abuse its discretion by denying the section 388 petition.

II

A.D. asserts the court erred by not finding the beneficial parent-child relationship she shared with A.G. outweighed the benefits A.G. would gain from adoption. She claims she had regular contact with A.G. and there was compelling evidence that continuation of their relationship would promote A.G.'s well-being.

Adoption is the permanent plan favored by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parent's burden to show that termination of parental rights would be detrimental to the child because a specified statutory exception exists. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the parent is required to show termination would be detrimental in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, the court noted "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception." In interpreting the meaning of "benefit" in section 366.26, subdivision (c)(1)(B)(i), this court stated in *In re Autumn H.*, *supra*, at p. 575:

"In the context of the dependency scheme prescribed by the Legislature, we interpret the 'benefit from continuing the [parent/child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents."

In reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence in the light most favorable to the trial court's order, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

A.D. met the first prong of the exception by maintaining regular contact through visits and telephone calls. However, substantial evidence supports the court's findings the benefits of adoption outweighed the benefits of continuing the parent-child relationship, and A.D. did not show A.G. would suffer great harm if parental rights were terminated. A.D. was never able to progress from supervised to unsupervised visits. She was appropriate and loving during visits, but needed close supervision. During some visits, she lost her temper and became argumentative, frightening A.G. Her ILS worker sometimes needed to direct interaction between A.D. and A.G.

When visits ended A.G. usually went to stand near her foster mother and separated easily from A.D. Although she said she would be sad if she did not see A.D. any more, there is no indication in the record that she asked about her between visits. A.G. needed the stability and permanence of an adoptive home, and she said she was happy living with her foster parents and wanted to stay with them. The court did not err by finding the beneficial parent-child relationship exception to termination of parental rights and adoption did not apply.

DISPOSITION

The orders are affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

AARON, J.